

**NATURAL RESOURCES BOARD  
Conference Call  
Minutes**

A special meeting of the Natural Resources Board via telephone conference call was held Monday, May 10, 2004, in Room 774B of the State Natural Resources Building (GEF 2), 101 South Webster Street, Madison, Wisconsin.

The meeting was called to order by Chairman Gerald O'Brien at 2:00 p.m.

**Participating Board Members:**

Gerald M. O'Brien, Chair (Stevens Point)  
Howard D. Poulson, Vice-Chair (Palmyra)  
Jonathan P. Ela, Secretary (Madison)  
Herbert F. Behnke (Shawano)  
Christine L. Thomas (Stevens Point)  
John Welter (Eau Claire)  
Stephen D. Willett (Phillips)

**ORDER OF BUSINESS**

1. Request for adoption of emergency rule order FH-21-04 (E) to create Chapter NR 341, pertaining to grading on the banks of navigable waterways.

**Todd Ambs**, Administrator, Water Division stated key issues needed to be decided since the last meeting. Over the last 3 weeks there have been many meetings with stakeholders. The language before the Board today has been agreed upon by the different constituent groups. The two areas reflected in the amendment are on endangered resources and how to treat Outstanding Exceptional Resource Waters (ORW/ERW). The major question about endangered resources was how should we handle a general permit when there is an endangered or threatened resource near where grading is proposed. If the Department finds an endangered resource, then a general permit application is deemed incomplete. There are two ways to resolve it. By showing they are avoiding impacts or by showing they have obtained an incidental take authorization. The ORW/ERW question was should there be certain types of waters that are ineligible for general permits. ORW/ERW streams are only eligible for individual permits for grading. ORW/ERW lakes are eligible for a general permit for grading, but it also requires a mandatory site visit. **Mr. Behnke** asked if there was an agreement between interested parties.

**Mr. Ambs** stated there is an agreement between builders and environmental groups. There may be joint news release.

**Mr. Welter** asked what has the Board's role been in passing the rules. Has the board adopted the rules in their entirety?

**Mr. Ela** stated he has been monitoring process from the start. There is an active involvement between the staff and the stakeholders and the interested legislators. At the March meeting we passed all of the emergency rules except grading rule.

**Mr. Welter** asked if the Board considered the NR 341 rule with the exception of these revisions that are highlighted in the proposal before us today.

**Mr. Ambs** stated the grading was presented to the Board at the last meeting and was tabled to resolve differences between stakeholders.

**Mr. Welter** stated he has a concern about spawning section NR 341.08(3)(e). Can you address the differences of duration of protection time for spawning trout in this rule compared to some of the other rules?

**Mr. Ambs** stated that there are some variations between trout spawning in fall and spring and some variations of Northern spawning versus Southern spawning. The basic concept behind grading is that there is a 35-foot bank buffer contained in the rule. We are not as concerned about adverse impact of grading on spawning as other activities that take place in the water.

**Mr. Welter** stated it would be beneficial to evaluate conditions during Mid December to April to see if grading has adverse impact on spawning.

**Mr. Ambs** stated that the emergency rules are only in effect for this construction season.

**Mr. Ela** stated that this rule is different than the others because it is mandated that the permanent rule be in place within 6 months.

**Mr. Welter** asked when would the permanent rule be brought before the Board.

**Mr. Ambs** stated that this fall it would go before the Board for permanent adoption.

**Mr. Ela moved to adopt emergency rule order FH-21-04 (E) to create Chapter NR 341, pertaining to grading on the banks of navigable waterways as amended in the May 10<sup>th</sup> revision, seconded by Mr. Poulson. The motion was carried unanimously by all members present.**

2. Request for authorization for public hearing on permanent rule order FH-24-04 to create Chapter NR 341, pertaining to grading on the banks of navigable waterways.

**Mr. Behnke moved to Request for authorization for public hearing on permanent rule order FH-24-04 to create Chapter NR 341, pertaining to grading on the banks of navigable waterways as amended in the May 10<sup>th</sup> revision, seconded by Mr. Poulson. The motion was carried unanimously by all members present.**

**Mr. Ela** stated he admires all parties involved for their cooperation in preparing these emergency rules.

The meeting was adjourned at 2:37 p.m.